

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of)	
Bizcorp, LLC,)	
)	
Complainant,)	
)	
v.)	Case No. 18-1123-TP-CSS
)	
Windstream,)	
)	
Respondent.)	

MOTION TO DISMISS OF RESPONDENT
WINDSTREAM

Windstream, by its attorney and pursuant to Section 4901:1-12 of the Commission's rules, moves to dismiss the captioned Complaint for the reason that it was filed on behalf of a limited liability company that is not represented by an attorney-at-law admitted to the practice of law in the State of Ohio. A memorandum in support of this motion is attached.

Respectfully submitted,

/s/ William A. Adams

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MEMORANDUM IN SUPPORT

A Commission rule specifies that, in practice before the Commission, ". . . each party not appearing in propria persona shall be represented by an attorney-at-law authorized to practice before the courts of this state. Corporations must be represented by an attorney-at-law." Ohio Admin. Code § 4901-1-08(A). Bizcorp, LLC is a limited liability company organized under Ohio law and must be represented by an attorney-at-law. The Commission may not permit a limited liability company to institute a formal complaint unless an attorney-at-law admitted to practice in the State of Ohio represents the entity. The Commission may not accept, and certainly should not process, any formal complaint brought by a limited liability company that is not represented by an attorney-at-law.

It is the law of Ohio that a corporate body cannot act through its corporate officers rather than through an attorney-at-law to maintain litigation on the entity's behalf. *Union Savings Assn. v. Home Owners Aid, Inc.* (1970), 23 Ohio St.2d 60. In *Sharon Village Ltd. v. Licking Cty. Bd. of Revisions* (1997), 78 Ohio St.3d 479, the Supreme Court of Ohio held that "[t]he preparation and filing of a complaint with a board of revision on behalf of a taxpayer constitute the practice of law." Thus, an attorney must prepare and file the complaint for a corporate owner. In the *Union Savings* case, the Court observed that "[a] corporation is an artificial person, created by the General Assembly and deriving the power, authority and capacity from the statutes." The Court held that "[a] corporation cannot maintain litigation in propria persona, or appear in court through an officer of the corporation or an appointed agent not admitted to the practice of law." *Id.* (syllabus par. 1).

Just as a corporation derives its power, authority and capacity from the statutes and is an artificial person, so it is with a limited liability company. Limited liability companies are governed

by Chapter 1705 of the Ohio Revised Code just as corporations are governed by Chapter 1701 of the Ohio Revised Code. Limited liability companies are separate legal entities from their owners just as corporations are.

The Supreme Court of Ohio has confirmed and expanded upon these precedents and has repeated its holding in the *Sharon Village* case that "[a] corporation cannot maintain litigation in propria persona, or appear in court through an officer of the corporation or an appointed agent not admitted to the practice of law." *Worthington City School Dist. Bd. of Edu. v. Franklin County Bd. Of Revision* (1999), 85 Ohio St.3d 156, 160; *see also Cincinnati Bar Assn. v. Clapp & Affiliates Financial Services, Inc.* (2002), 94 Ohio St.3d 509 (a corporate officer was held in contempt for engaging in the unauthorized practice of law).

The Court also has declared that the practice of law includes the conduct of litigation and those activities which are incidental to appearances in court. *Akron Bar Assn.v. Greene* (1997), 77 Ohio St.3d 279. In that case, the Court reviewed its holding in *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 23 (paragraph one of the syllabus), where it said, "The practice of law *** embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts ***." The preparation of a formal complaint pursuant to Ohio Rev. Code § 4927.21 clearly meets this test for determining whether such activity constitutes the practice of law.

The Supreme Court of Ohio found that the preparation, signing, and filing of documents instituting formal complaints before the Commission constitute the practice of law. *Cleveland Bar Assn. v. Woodman*, 98 Ohio St.3d 436, 2003-Ohio-1634. The Commission has cited and relied on

that precedent. *Terry Metzenbaum v. AT&T Corp.*, Case No. 03-142-TP-CSS, Entry, May 22, 2003, p. 4.

For all of the foregoing reasons, Respondent Windstream respectfully requests that this Complaint be dismissed. In addition, the Commission should not process the Complaint further unless and until the Complainants are represented by an attorney-at-law.

Respectfully submitted,

/s/ William A. Adams

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing *Motion to Dismiss of Respondent Windstream Communications, Inc.* was served this 2nd day of August, 2018, by regular U.S. Mail upon Complainant as follows:

Bizcorp, LLC
c/o John Chaffin, President
1335 Dublin Road, Suite 118-A
Columbus, OH 43215

/s/ William A. Adams

William A. Adams, Counsel of Record

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Case No(s). 18-1123-TP-CSS

Summary: Motion to Dismiss of Respondent Windstream electronically filed by Mr. William A. Adams on behalf of Windstream